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Pro se Creditor

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: Chapter 11
	:
CELSIUS NETWORK LLC, et al.,	: Case No. 22-10964 (MG)
	:
Debtors¹	: (Jointly Administered)
-----X	

**VÍCTOR UBIERNA DE LAS HERAS OBJECTION TO DEBTORS’
MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE
DEBTORS’ KEY EMPLOYEE INCENTIVE PROGRAM AND (II)
GRANTING RELATED RELIEF (Dk. 2336)**

Víctor Ubierna de las Heras, pro se Creditor, hereby files this Objection to Debtors’ Motion For Entry Of An Order (I) Approving The Debtors’ Key Employee Incentive Program And (Ii) Granting Related Relief (Dk. 2336) and respectfully states as follows:

ARGUMENT

1. Insiders of Celsius should not receive any bonus. If anything, some of the insiders proposed as recipients should be fired. Most of them are accomplices of Mr. Mashinsky. Some took part in the fraud around Celsius and others knew and said nothing.

2. Some of the proposed recipients of the KEIP already profited because of their position. While Celsius and Mr. Mashinsky kept saying that Celsius was doing ok, we now know that a Board meeting took place in early May 2022 and that insiders of the company

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); and Celsius US Holding LLC (7956). The location of Debtor Celsius Network LLC’s principal place of business and the Debtors’ service address in these chapter 11 cases is 121 River Street, PH05, Hoboken, New Jersey 07030

knew the bad situation Celsius was in and that Celsius was making misleading representations. However, some of the proposed KEIP recipients withdraw their money currently. For example, Adrian Alisie withdrew 28,000 USD on May 9, 2022. Roni Cohen Pavon also withdrew on May 2022 \$9,500.00. Mr. Pavon also withdrew more than half a million dollars around mid-late 2021. That is at the same time he wrote the new TOS that deprived customers of contract claims against Celsius and the UK FCA was investigating Celsius and Celsius was lying to customers. It is highly improper that someone like Roni Cohen Pavon or Adrian Alisie be suggested to receive an incentive.

3. As per the Examiner's Final Report (docket 1956) Mr. Cohen Pavon took part in the nefarious deal with KeyFi, "According to Mr. Holert, there was no "process" involved in the KeyFi deal, which he saw as "forced" on Celsius by Mr. Mashinsky and Mr. Cohen-Pavon, over the objection of Chief Financial Officer Urata-Thompson". Mr. Cohen Pavon also took part in some of the AMA's in which Mashinsky made material misrepresentations to customers² and he did nothing to correct them while live. In April 2022 he wrote some emails (See exhibit A) requesting edits in the videos, but did nothing to be transparent to customers about what was really happening. He should receive nothing.

4. If the KEIP is to be approved, before doing so names need to be checked against the Examiner's Report, as a lot of the proposed names were behind the collapse of Celsius and should not receive any reward or incentive whatsoever. While the Declaration of ALLISON HOEINGHAUS talks about what other companies pay to directives as incentives and whether it is necessary to pay this, it makes no analysis of the previous

² "On July 24, 2020, Mr. Mashinsky repeated this theme: "[W]hen you give us bitcoin it's not like it's ours, right? It's yours legally. It is still your bitcoin. The only thing we do is when you lend us your bitcoin, we lend them to people who pay us interest. When they return them, it goes back to the wallet and it's still yours from that wallet."981
"Celsius, Celsius Network AMA with Alex Mashinsky and HFN's Roni Cohen-Pavon, YouTube (July 24, 2020), <https://www.youtube.com/watch?v=kC-89USzxaM>

conduct of these employees. This is not an ordinary case, as fraud took place in this company and even the UCC is seeking permission to file a proof of claim for fraud for all customers. It seems like the proposed KEIP quantities and recipients were compared to other Chapter 11 cases (Avaya Inc.; Bristow Group Inc.; Claire's Stores, Inc.; Frontier Communications; Hertz; iHeartMedia, Inc.; Intelsat S.A.; LSC Communications, Inc.; Mallinckrodt plc; NPC International, Inc.; Purdue Pharma, L.P.; Sears Holdings Corporation; Stage Stores, Inc.; Toys "R" Us, Inc.; and Windstream Holdings, Inc). However, those cases did not present the fraud and other claims that directives of this company caused. It is neither fair nor reasonable to pay incentives to this insiders. Debtors argue in their KEIP Motion that the KEIP Is a Sound Exercise of the Debtors' Business Judgment. However, it is impossible that awarding incentives to insiders that allowed Celsius to defraud customers is in anyone best business judgment. Everyone who in any way allowed the fraud and misrepresentations should not receive any incentive and a lot of the proposed names did so. If anything, these directives should receive the CEL which they likely help manipulate its price.

5. Debtors offer little to no evidence as to whether the KEIP is to achieve a desired performance or to retain employees. While they argue the first, it seems like the later. Plan confirmation is the only job that employees currently have, so no incentive should be paid because of it. However, when one reads the Declaration submitted with docket 2337, it seems like the KEIP is designed to retain these employees³. Thus, Debtors does not comply with the requirements to pay retention bonus to insiders. More evidence needs to be offered, the declarant should be offered for cross examination and the Court should not allow any

³ From the Declaration filed with number 2337: "Based on my experience, when a reorganizing debtor's primary market for talent is comprised of non-distressed companies in the general industry, financial services and high tech, the reorganizing debtor lacks material short- and long-term incentive pay opportunities for critical employees that they could otherwise receive if they sought employment at a competitor in one of these industries". The KEIP is to retain these insiders and should be denied.

retention bonus to be paid to insiders is that is what is happening. The two general overriding policies of Section 503 of the Bankruptcy Code are: (i) to preserve the value of the estate for the benefit of its creditors and (ii) to prevent the unjust enrichment of the insiders of the estate at the expense of its creditors. In re Journal Register Co., 407 B.R. 520, 535 (Bankr. S.D.N.Y. 2009) (citing Trustees of Amalgamated Ins. Fund v. McFarlin's, Inc., 789 F.2d 98, 101 (2d Cir. 1960)). Thus, the KEIP, as intended in reality to retain insiders, should be denied.

6. Furthermore, there is no cause to waive the 14-day stay of Rule 6004(h). The KEIP is not time critical, as debtors say that the incentives will be paid after plan confirmation. Thus, it should not be waived.

Reservation of rights

Víctor Ubierna de las Heras reserves the right to supplement and/or amend this Objection at or prior to the Hearing, or any other relevant hearing and to join in arguments made by any other party prior to or at the Hearing or any other relevant hearing. Debtors have adjourned the hearing of the KEIP motion until May but have not moved the objection deadline to May. Víctor Ubierna de las Heras also reserves all other rights belonging to him.

CONCLUSION

WHEREFORE, Víctor Ubierna de las Heras respectfully requests that the Debtors' Motion For Entry Of An Order (I) Approving The Debtors' Key Employee Incentive Program And (Ii) Granting Related Relief (Dk. 2336) be denied.

(Signature block on next page)

Certificate of Service

I certify that Notice of this Objection has been given in accordance with the *Amended Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures, and (II) Granting Related Relief*. Víctor Ubierna de las Heras submits that such notice is sufficient, and no other or further notice need be provided.

Dated: April 11, 2023

Madrid, Spain

Respectfully submitted,

Víctor Ubierna de las Heras

By: /s/ Víctor Ubierna de las Heras

Víctor Ubierna de las Heras

Pro se creditor

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Exhibit A

Message

From: Peter Graham [REDACTED]
on behalf of Peter Graham [REDACTED]
Sent: 4/25/2022 7:13:13 PM
To: Rodney Sunada-Wong [REDACTED]
CC: riskmgrs [REDACTED]
Subject: Re: AMA Youtube April 8 - Needed edits

Hi -- alive, I met with the regulatory team today and we are combining documents for this. I also spoke with the video team. Will update more soon...

On Mon, Apr 25, 2022 at 2:58 PM Rodney Sunada-Wong [REDACTED] wrote:
hi. What's the prognosis? Is this effort alive or dead? Thanks

Rodney Sunada-Wong
[REDACTED]m

On Fri, Apr 15, 2022 at 12:48 PM Peter Graham [REDACTED] wrote:
I have a draft but it's not ready for circulation. I should be able to finish it soon and would like to circulate with regulatory before escalating further.

I inquired to see if this could fit into the AMA prep process but from what I can tell it's pretty unstructured and last-minute.

On Fri, Apr 15, 2022 at 11:40 AM Rodney Sunada-Wong [REDACTED] wrote:
Hi - did you have a chance to do this?

Rodney Sunada-Wong
[REDACTED]m

On Mon, Apr 11, 2022 at 10:41 AM Peter Graham [REDACTED] wrote:
Hi,

Yes, will do by tomorrow.

PG

On Sat, Apr 9, 2022 at 4:30 PM Rodney Sunada-Wong [REDACTED] wrote:
Peter -

hi. please see email chain below

It may make sense each week to create for Alex a summary (with a different email subject)

- that says the following items have been removed from the youtube recordings
- with a brief explanation for why each was removed.

Could you mock up an email based on Friday's edits? Thanks

Rodney Sunada-Wong
[REDACTED]

----- Forwarded message -----

From: **Rodney Sunada-Wong** [REDACTED]
Date: Sat, Apr 9, 2022 at 8:00 AM
Subject: Re: AMA Youtube April 8 - Needed edits
To: Roni Pavon [REDACTED]

Makes sense

On Fri, Apr 8, 2022 at 8:12 PM Roni Pavon [REDACTED] wrote:
Let's get your team to send it to him and CC me, Oren, Ron, Aslihan and Rod.

I think we all agree on the necessity on fixing it and not only by editing (especially since it's live and there are cases we are unable to edit, like twitter space and 3rd party interviews)

Thoughts?

On Sat, Apr 9, 2022 at 12:43 AM Rodney Sunada-Wong [REDACTED] wrote:
We could, but haven't added him because the email has ~30 people in it.

Maybe we send an email to him and cc a very limited number of others where we say "FYI Alex, we removed the following items..." I think this would feel more "private" for Alex.

FYI - I have at times mentioned to him in our one on one's about avoiding certain statements e.g. don't say we take no leverage, whereas banks are leveraged 50 times.

(Last year, I provided him data that showed both banks and Celsius were ~10-20x. Fortunately, nowadays he says banks are 10-20, not 50x, but even as recently as March he said we have 1.0-1.2 leverage.)

On Fri, Apr 8, 2022 at 3:58 PM Roni Pavon [REDACTED] wrote:
Don't you think we should have Alex on this thread? Maybe it will make him more aware of the do's and don'ts

----- Forwarded message -----

From: **Shakti Tailor** [REDACTED]
Date: Fri, Apr 8, 2022 at 10:40 PM

Subject: Re: AMA Youtube April 8 - Needed edits

To: Peter Graham [REDACTED]

Cc: S. Daniel Leon [REDACTED], Zach Wildes [REDACTED], Tom
McCarthy [REDACTED], <Regulation [REDACTED]>, Nuke Goldstein

[REDACTED], Roni Pavon [REDACTED], Ron Deutsch

[REDACTED], Bethany Davis [REDACTED], Tushar Nadkarni

[REDACTED], Yarden Noy [REDACTED], Jennifer Kattula

[REDACTED], Risk Management [REDACTED], Aslihan

Denizkurdu [REDACTED], Oren Blonstein

[REDACTED], Jerry Ho [REDACTED], Anvar Nurullayev

[REDACTED], Rodney Sunada-Wong [REDACTED],

Shawn Dej [REDACTED], Connor Nolan [REDACTED]

Hey Team,

All these edits have been made and the video is currently processing on YouTube.

Have an awesome weekend.

Cheers,

Shakti

On Fri, Apr 8, 2022 at 7:49 PM Peter Graham [REDACTED] wrote:

Hi all,

Please find below for requests for comment (FROM REGULATORY) and removals.

Redacted

Redacted

Redacted

0:27 - REMOVAL - we state we have the highest insurance in the industry, this has been flagged before for removal in the past, please remove again.

custodian they're based in Israel for about 35 employees who do an excellent job. Keeping your stuff safe, right? The highest insurance in the industry right 750 million 150 million right? Get it insurance pair clients right per client. I don't think anyone else in the world. Has that right in the markets. It's amazing yeah so and and you guys are helping Celsius. Keep our asset safe right and also launch many new assets right right so we do self-custody for very large institutions by working with the banks exchanges custo



Celsius AMA April 8th 2022

123 watching now • Scheduled for Apr 8 2022

173 DISLIKE SHARE SAVE

0:29 - 0:32 - BIG REMOVAL - The IR rep from JKL Capital states that they are one of Celsius's biggest clients, that they pledge ETH/BTC and borrow USD, and that they like the transparency of Celsius. They are onboarded, but have no history of loans with Celsius, and the trading desk has never heard of them. Because the relationship she describes does not exist, *everything she says about JKL's relationship with Celsius should be removed. (images below are not exhaustive)*

how do you find the conference the Bitcoin 2020? It's my first big conference and I'm actually getting a little bit overwhelmed here with all the events. The biggest trick here. The biggest trick at the moment is organized all the parties after the conference because there's a lot overlapping closer. Yeah all right. So a lot of our customers. Always ask wait a second who borrows all this Bitcoin you you. Yeah you collected 159,000 Bitcoin you keep it safe but who actually borrows it. Why do they need to borrow it so maybe explain what the bit what



Celsius AMA April 8th 2022

10 watching now • Scheduled for Apr 8 2022

267 DISLIKE SHARE SAVE ...

run and then I have to sell it so hopefully I wish I was a math wizard but basically we have an AI model running and arbitrage and directional strategy, so that's our main business and then for our existing clients. We also offer landing and boring solutions is an investment so from the one the one hand that it works. Is we pledge BTC and ETH with Celsius. We have a big contract with with guys and then we would borrow USD on the other side and and vice versa. How been your experience with working with a Celsius team



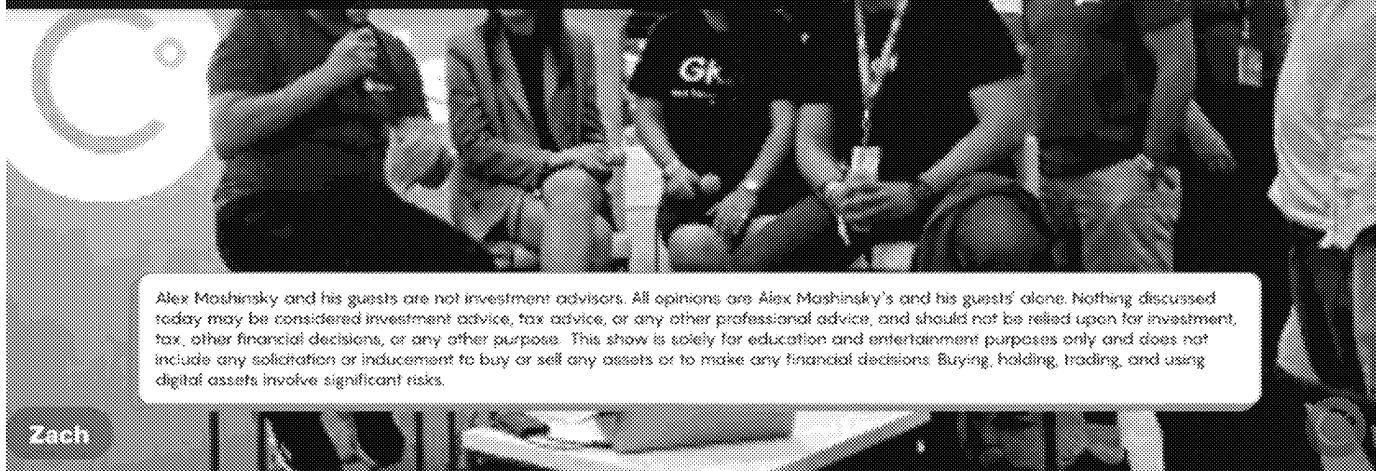
Celsius AMA April 8th 2022

18 watching now • Scheduled for Apr 8, 2022

267 DISLIKE SHARE SAVE ...

0:34 - REMOVAL - Most insurance, per above, removal.

on somebody's else nodes and they're effectively giving up the keys instead of holding it themselves so that's an important distinction to explain you know. Just want to add that now all of GK clients can have the best of both they can have decayed highest level security highest level of insurance together with cellulose highest yield in the market and that's like win-win for everybody. So super that's right and we just need one feet one more female here to dominate the stage instead of you



elsius AMA April 8th 2022

Redacted

Redacted

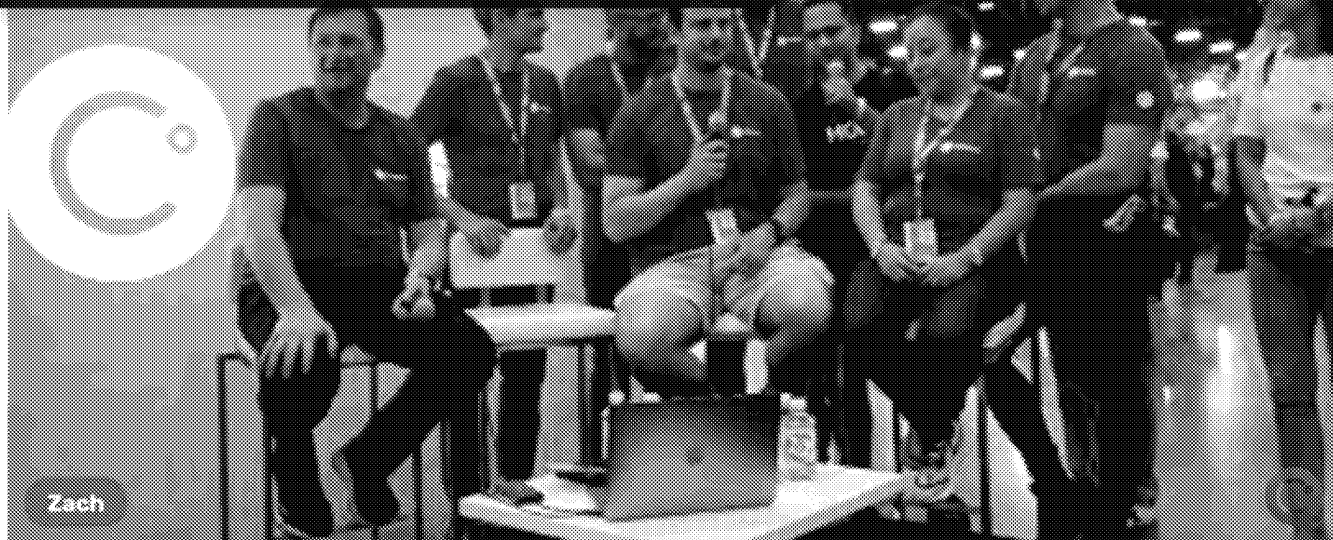
Redacted

Redacted

Redacted

0:56 - REMOVAL - Alex says that we are the only crypto company with phone support, this is not true, Coinbase has a phone number, please remove.

part of the Las Vegas customer care team senior agent. There is the best Celsius is the best. Yeah where can I get a hold of customer care? You can get a hold of us at all now or Celsius dot network? Just click on care and submit a ticket. Fantastic! Still Celsius the only team that has font support where you can just call and talk to somebody right you don't feel good. Your stomach hurts call 1-866 huddle now okay yeah okay you said hey my name is you safe and part of the marketing production



Celsius AMA April 8th 2022

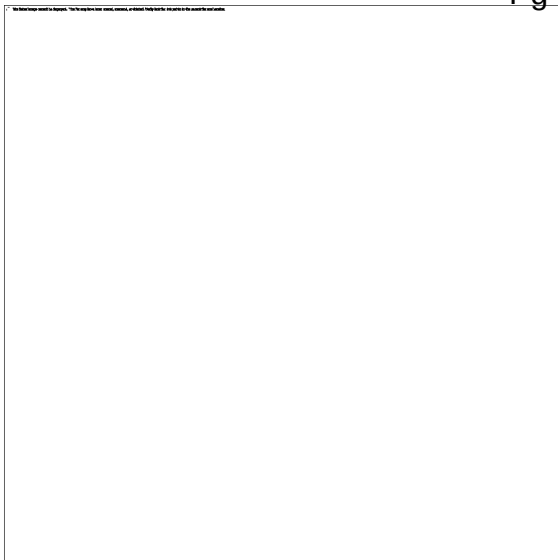
17 watching now • Scheduled for Apr 8, 2022

👍 279 💬 DISLIKE ➦ SHARE ⌵ SAVE ...

Have a good weekend.

PG

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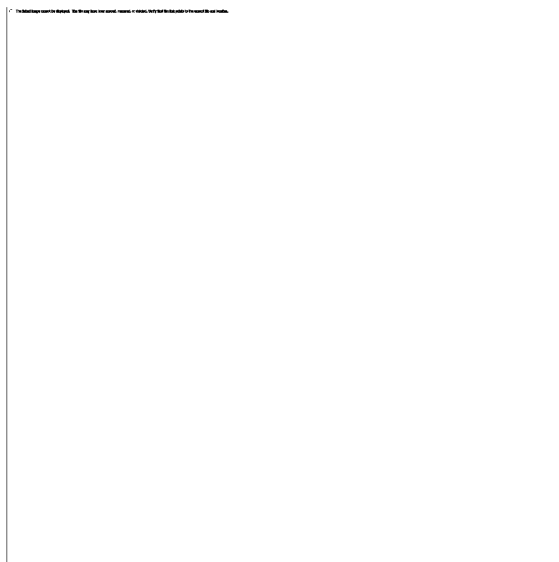


Peter Graham
Credit Officer | Celsius

phone: +1 [REDACTED]

Download the Celsius app today!

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Shakti Tailor
Creative Video

.....
Unbank Yourself
celsius.network

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XX XX



Roni Cohen Pavon
Chief Revenue Officer | Celsius

phone: Redacted - Personal Information

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Roni Cohen Pavon
Chief Revenue Officer | Celsius

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Rodney Sunada-Wong

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